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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER	
MOSSER, KATHLEEN MICHELE	
ART UNIT	PAPER NUMBER
3714	

MAIL DATE	DELIVERY MODE
05/29/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	09/910,520	FARCHIONE, SAMUEL	
	Examiner	Art Unit	
	Kathleen Mosser	3714	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *03/20/2007*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-14 and 16-43* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-14 and 16-43* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

In response to the amendment filed 03/20/2007, claims 1-14 and 16-43 are pending.

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 03/20/2007 has been entered.

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

> Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

1. Claims 1-14 and 16-43 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. In order for a claim to be statutory it must show a practical application of an otherwise abstract idea. A practical application may be demonstrated through either (a) showing a physical transformation or (b) otherwise showing a useful, concrete and tangible result. In the present case, there is no physical transformation occurring, each of the steps is intended to occur with the aid of computer system or exclusively through the alteration of data. Further there is no tangible result. In order for a result to be tangible it must be tied to the real world in such a manner as to make the result appreciable to the user or viewer of the system. Although in the instant invention data is received and processing is performed using the data, the result of these steps are never realized in a "real-world"

application, (ie of communication to the user), thus there is no real-world practical application of the abstract idea (identifying individual fashion selections).

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1, 5-7, 10, 16-17, 20, 22-23, 26-27, 32-34, 37, 39-40, and 43 are rejected under 35 U.S.C. 102(b) as being anticipated by Gourtou et al (US 5478238). Gourtou teaches a method for selecting fashion information for an individual including: providing a style database including complimentary fashion information having cosmetic data and physical characteristics data; providing a personal characteristic database adapted to receive physical characteristic data for an individual (col. 7: 14-42); providing an input device operable to capture physical characteristics data about the individual (input means 24); capturing with the input device physical characteristic data of the individual (using the camera or entering information directly); receiving in the personal characteristic database physical characteristic data for at least two physical characteristics for an individual; comparing the physical characteristics data for the individual with the style database to identify complimentary fashion selections that are appropriate for the individual based upon the physical characteristic data received in the personal characteristic database and generating a data set that includes complimentary fashion selections that are appropriate for the individual based upon the physical characteristic data received in the personal characteristic database (col. 7:57-col. 8:25), as in claim 1 and substantially similar limitations in claims 16, 20, 22, 27, 32, 33, 37 and 39. The cosmetic data includes at least color (claim 5) as is shown as the foundation palette and described in at least col. 9: 24-51. The physical characteristics can include skin color, skin tone, hair color and/or eye color (claims 6, 17, and 34) as is shown in at least col. 7: 14-42.

The input device including a digital camera (claims 7, 23, and 40) is shown in col. 6: 57. The input device including a computer (claims 10, 26, and 43) is shown in col. 5: 29-36.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

The factual inquiries set forth in *Graham* **v.** *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

3. Claims 1, 5, 6, 8-10, 12-14, 16, 18-21, 24-30, 33, 35-37, 39 and 41-43 rejected under 35 U.S.C. 103(a) as being unpatentable over MacFarlane et al (US 5311293) in view of Fabbri et al (US 4561850) for the reasons set forth in the office action dated 04/10/2006, and incorporated herein by reference.

4. Claims 2-4 are rejected under 35 U.S.C. 103(a) as being unpatentable over MacFarlane/Fabbri as applied to claim 1 and further in view of Nakamura (US 4987552) for the reasons set forth in the office action dated 04/10/2006, and incorporated herein by reference.

5. Claims 7, 23, and 40 are rejected under 35 U.S.C. 103(a) as being unpatentable over MacFarlane/Fabbri as applied above and further in view of Rifkin et al (US 6065969) for the reasons set forth in the office action dated 04/10/2006, and incorporated herein by reference.

6. Claims 11, 21, 31, and 38 are rejected under 35 U.S.C. 103(a) as being unpatentable over MacFarlane/Fabbri as applied above and further in view of Thies et al (US 5206804) for the reasons set forth in the office action dated 04/10/2006, and incorporated herein by reference.

7. Claims 2-4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gourtou et al (US 5478238) in view of Nakamura (US 4987552). Gourtou fails to teach the inclusion of instructional data, including a multimedia or video presentation. Nakamura shows this feature to be old in the style art. Nakamura discloses personalized cosmetics videos (col 1, 30-36). Nakamura teaches that women request this information frequently (col. 1, 18-27). It would have been obvious to one of ordinary skill in the art at the time of the applicant's invention from the teaching of Nakamura to modify the style database of Gourtou by including the instructional data of Nakamura to provide information that women request frequently and to facilitate learning of the proper application of cosmetics to achieve the desired effects.

8. Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Gourtou (US 5478238). Gourtou fails to teach that the database is accessible over a network. However, the applicant has admitted that such is old an well-known in the art (see examiner's observation below). It would have been obvious to one of ordinary skill in the art to include this feature into the Gourtou system so as to allow for a centralized database of all the information necessary to operate a plurality of the machines.

9. Claims 8, 9, 12, 13, 18, 19, 24, 25, 28-30, 35, 36, 41 and 42 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gourtou et al (US 5478238) in view of MacFarlane (US 5311293). Gourtou fails to teach the use of a colorimeter (claims 8, 24 and 41); a spectrophotometer (claims 9,25 and 42); that the database includes clothing information, including size data, style data, fabric color, or texture data

(claims 12, 13, 18, 19, 28, 29, 35, 36). MacFarlane teaches the use of a colorimeter or spectrophotometer for inputting skin ton information into a computer system in at least col. 6:56-57. MacFarlane teaches using the system for fabric selections, including fabric color in at least col. 3: 66-col. 4: 22, col. 4: 35-45, and col. 17:11. It would have been obvious to one of ordinary skill in the art to include the features of MacFarlane into the invention of Gourtou to provide additional or alternative means for determining skin tone color and to provide the user of the system with a complete analysis of their skin tone so as to be able to coordinate clothing colors along with make-up choices.

10. Claims 11, 21, 31, and 38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gourtou et al (US 5478238) or Gourtou et al (US 5478238) in view of MacFarlane (US 5311293), in view of Thies et al. (US 5,206,804). Gourtou and MacFarlane fail to explicitly teach that the style database further comprises footwear information. Thies shows this feature to be old in the style art. Thies discloses a database containing footwear information (co/. 6, 66-68). It would have been obvious to one of ordinary skill in the art at the time of the applicant's invention from the teaching of Thies to modify the style database of Gourtou and MacFarlane to include the footwear of Thies to provide more fashion options for the user.

Response to Arguments

Applicant's arguments filed 03/20/2007 have been fully considered but they are not persuasive.
Firstly the examiner notes that the previous taking of Official Notice that providing computer databases over networks is old and well-known in the art was never challenged. As such it taken as admitted prior art. See MPEP 2144.03, section C.

Rejection under 35 USC §101

Applicant's arguments assert that the amendment to the claims including the phrase "generating a data set" in the claims produces a useful, concrete and tangible result. From the *Interim Guidelines:*

> "The claim must be examined to see if it includes anything more than a §101 judicial exception. If the claim is directed to a practical application of the §101 judicial exception producing a result tied to the physical world that does not preempt the judicial exception then the claim meets the statutory requirement of 35 USC §101."

The method of the instant invention generated data without communicating that data outside the system on which it is performed, thus failing to produce a tangible result and therefor being non-statutory.

Rejections under 35 USC §103

Applicant maintains arguments asserting that MacFarlane teaches away from the inclusion of other features. The examiner hereby incorporates the response to arguments from the office action mailed 09/20/2006 by reference, as the substantially respond to the currently presented arguments. The examiner further reiterates that in making a determination of obviousness the teachings of the prior art most be considered as a whole. In the instant case, both MacFarlane and Fabbri teach that it is known in the art to make color determinations based upon multiple physical characteristics. Although the MacFarlane invention is disclosed as being based only on skin color, it does not teach that other physical characteristics could not be incorporated as secondary considerations. Fabbri, like MacFarlane, uses skin color as the primary determination, and teaches using eye color as a secondary or refining characteristic. Given this teaching, the examiner maintains that the prior art, as whole, teaches that one of ordinary skill in the art would have been motivated to incorporate the proposed features of Fabbri with the teachings of MacFarlane.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kathleen Mosser whose telephone number is (571) 272-4435. The examiner can normally be reached on M-F 8:00-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Pezzuto can be reached on (571) 272-6996. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Kathleen Mosser
Primary Examiner
Art Unit 3714

May 23, 2007